

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

WEDNESDAY, THE 14TH NOVEMBER 2007 / 23RD KARTHIKA 1929

Crl.Rev.Pet.No. 3992 of 2007()

CMP.2601/2006 of JUDL. MAGISTRATE OF FIRST CLASS, VAIKOM
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REVN. PETITIONER: PETITIONER

JAIMOL REJI, W/O.REJI KURIAN,
PAZHUKKATHARA HOUSE, KALLARA, VAIKOM.

BY ADV. SRI.SIBY MATHEW
SRI.PHILIP J.VETTICKATTU

RESPONDENTS: ACCUSED & STATE

1. SADANANDAN, S/O.NARAYANAN,
THOTTATHIL, PERUMTHURUTHU KARA, KALLARA, VAIKOM.
2. K.N.SASIDHRAN,S/O.NARAYANAN, KARTHIKA
SADANAM, DO..DO..
3. GEETHAKUMARI,W/O.RADHAKRISHNAN,
RAJ BHAVAN, MANJOOR KARA, VAIKOM.
4. AJEESH.P.NAIR,S/O.PADMANABHAN,
CHAVADIYIL HOUSE,KEEZHOOR KARA, MULAKKULAM,
VAIKOM.
5. STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.

BY PUBLIC PROSECUTOR C.M. NAZAR
SRI.A.A.ABUL HASSAN
SRI.BASMA CHEERAN

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 14/11/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

V. RAMKUMAR, J.

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Crl.R.P. No. 3992 of 2007

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Dated: 14-11-2007

ORDER

The revision petitioner who was the complainant in C.M.P. 26021 of 2006 on the file of the J.f.C.M., Vaikom challenges the order dated 10-08-2006 passed by the Magistrate dismissing the complaint under Section 203 Cr.P.C. after conducting an enquiry under Sec. 202 Cr.P.C.

2. The case of the revision petitioner in the private complaint filed by him against respondents 1 to 4 herein can be summarised as follows:-

The husband of the complainant borrowed an amount of Rs. 10,000/- from the first respondent in December 1999 in the presence of the complainant and P.W.2 (Mohan). Towards security for the amounts so borrowed the husband of the complainant had issued a signed blank cheque as demanded by the first respondent. The sum of Rs. 10,000/- borrowed was repaid by the complainant's husband in the presence of the complainant and P.W.2 (Mohan) in October, 2002. But the first respondent demanded a sum of Rs. 5000/- towards interest and since that was not paid he withheld the signed blank cheque. In January 2003 the complainant's husband went abroad undertaking to send the additional amounts claimed by the first respondent and the first respondent agreed to return the cheque on payment of the amount through P.W.2. On 13-1-2004 the complainant's husband received a lawyer notice issued on behalf of the 4th respondent demanding a sum of Rs. 3,60,000/- from the

complainant's husband. The complainant's husband had no sort of money transaction with the 4th respondent and no amount was borrowed from the 4th respondent. Even though the complainant had with the help of P.W.2 (Mohan) approached for return of the signed blank cheque. That was not done. Instead, he had entered into a criminal conspiracy with the intention of grabbing a huge amount from the complainant's husband by converting the signed blank cheque into one for a sum of Rs. 3,60,000/-. The complainant has come to know that the first respondent had passed on the cheque to the 2nd respondent who in turn had passed on the same to the 3rd respondent who in turn had entrusted the same with the 4th respondent. They were misusing the blank cheque leaf. Even though the complainant had lodged a complaint before the Kaduthuruthy Police Station, the police did not investigate the case properly and the complainant had to move the High Court for appropriate relief. As per the direction of the High Court, the Kaduthuruthy Police registered Crime No. 138 of 2005 but on account of the influence of the respondent the police referred the case stating that the case was of a civil nature. Hence the complaint. The accused have thereby committed offences punishable under Sections 420, 120 B read with Sec. 34 I.P.C.

3. On the side of the complainant 6 witnesses were examined as P.Ws 1 to 6 of whom P.W.1 is the complainant herself. After evaluating the evidence given by P.Ws 1 to 6 during the enquiry under Sec. 202 Cr.P.C. the Magistrate came to the conclusion that there was no sufficient ground for proceeding with the complaint and accordingly dismissed the complaint under Sec. 203 Cr.P.C. It is the said order which is assailed in this Revision.

4. The learned counsel appearing for the revision petitioners made the following submissions before me in support of the revision:-

Apart from the fact that the evidence of P.Ws 1 to 6 has not been properly appreciated, the learned Magistrate has relied on the refer report filed by the police for ascertaining the genuineness of the complaint under Sec. 203 Cr.P.C. The only material which can be looked into by the Magistrate is the statements of the complainant and her witnesses and the result of the enquiry or investigation, if any ordered under Sec. 202 Cr.P.C. Since the Magistrate did not order any investigation by the police the only material which could have been adverted by the Magistrate was the statements on oath given by P.Ws 1 to 6. The materials produced along with the refer report were extraneous to the proceedings before the Magistrate and could not have been looked into. The revision petitioner relies on the decision reported in ***Prabhakaran Nair v. Joseph Chacko - 1972 KLT 844.***

5. I am afraid that I cannot agree with the above submissions. It is true that in paragraph 5 of the impugned order the Magistrate has stated that he has also gone through the refer report filed by the investigating officer in Crime No. 138 of 2005 of Kaduthuruthy Police Station. But then, even de hors the refer report the Magistrate has independently considered the testimony of P.Ws 1 to 6 to arrive at a conclusion that the private complaint was filed with the ulterior motive of escaping from the liability in the case instituted by the 4th respondent against the husband of the complainant under Sec. 138 of the N.I. Act. Even according to the complainant, the borrowal was in the year 1999. She claims to have repaid the loan in the year 2002. Her definite case is that in spite of the demand, the first respondent did not return the cheque as he was making an unreasonable demand of Rs. 5,000/- by way of interest. Absolutely no steps have been taken either by the complainant or by her husband for the failure on the part of the first respondent to return the cheque. Admittedly, the statutory notice in the complaint filed under Sec. 138

of the Act was received by the complainant in the year 2004. Even then she did not take any steps either against the first respondent or against the 4th respondent. If her case is that the cheque which was entrusted with the first respondent was misutilised by him by passing it on to the 4th respondent, it was a case of betrayal of the confidence reposed by her in the first respondent. Still she or her husband have not initiated any action against the 4th respondent or the first respondent either in the year 2002 when the cheque was refused to be returned or at least in 2004 when the prosecution under Sec. 138 of the Act was launched against her husband.

6. When the material produced before the Magistrate during the enquiry under Sec. 202 Cr.P.C. has been independently considered by the learned Magistrate, merely because he has also drawn sustenance to his conclusion by adverting to the refer report filed by the police does not vitiate the conclusion reached by the Magistrate. The Magistrate was reaching the above conclusion after a careful evaluation of the oral evidence adduced before him. Except PW2 all the other witnesses are relatives of the complainant. P.W.2 is admittedly a friend of the complainant and her husband. Their testimony did not instill confidence in the Magistrate. While sitting in the revisional jurisdiction, this Court will be loathe to interfere with the conclusion reached by the learned Magistrate.

This Revision is accordingly dismissed.

V. RAMKUMAR, (JUDGE)

Crl.R.P. 3992 of 2007

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